THE HON'BLE SRI JUSTICE C.V. RAMULU

Thursday, 12th day of April,2007

W.P.No.4440 of 1994

Between:-

P. Prabhakara Rao & others … Petitioners

and

Managing Director, M/s.Bharat
Heavy Plate & Vessels Ltd.,
Visakhapatnam and another … Respondent

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.4440 of 1994

ORDER:

The short question that falls for consideration in this Writ Petition is whether the petitioners are entitled for refixation of their pay on par with their junior – D.Mariadas in the cadre of Grade IV ?

The facts are not much in dispute. It seems, in one selection, petitioners and 8 others (totalling to 23) were appointed initially as apprentice in the Welder trade by Proceedings dated 26-12-1975 in the respondent-organization. The selection was based on merit and ability and they were asked to undergo apprentice training. After the training, all the 23 persons were regularly absorbed in S.S.W. scales and their pay was fixed at Rs.275/-. On 1-4-1978, all the petitioners and their juniors were promoted to Grade III and their basic pay was fixed at Rs.320/-. In the year 1980, a Departmental Promotion Committee was constituted for promotion to Grade IV and all the petitioners and 7 other senior Welders were promoted to IV Grade with effect from 1-7-1980 and their basic pay was fixed at Rs.404/-. However, one D.Mariadas, who was appointed along with the petitioners as apprentice and thereafter regularized in that cadre and promoted to III Grade, failed in the test conducted by the D.P.C. for promotion to IV Grade. However, he appeared six months thereafter before the D.P.C. and was promoted to IV Grade with effect from 1-1-1981. Thus, the said Mariadas was lagging behind 6 months to the

petitioners and 7 others. But, the pay of the petitioners was fixed at Rs.718/-, whereas the pay of the junior-Mariadas was fixed at Rs.738/- in Grade IV post in the revised pay scales, with effect from 1-1-1983. In fact, Mariadas became junior to all the 22 persons, since they marched over him. They were six months ahead of him in the promotion post of Grade IV. Though Mariadas was promoted six months later i.e. with effect from 1-1-1981, his pay was fixed at Rs.738/-. Therefore, the petitioners made a representation seeking to fix their pay on par with their junior-Mariadas. Respondents granted pay fixation on par with Mariadas at Rs.738/- to 7 of their seniors, but denied the same to the petitioners without any basis. Several representations made by the petitioners, in this regard, from time to time were not taken up for consideration. Therefore, this Writ Petition.

A detailed counter affidavit has been filed on behalf of the 1st respondent denying the allegations made by the petitioner. It is asserted that Mariadas and 7 others from among 23 Welders (including the petitioners) were placed above the petitioners based on the *inter se* merit as per the procedure. As such, Mariadas and 7 others were seniors to the petitioners in the pay scale of W.G.II. The said seniority was carried when they were promoted to W.G.III and W.G. IV with effect from 1-7-1980' whereas, Mariadas was promoted from W.G. III to W.G. IV with effect from 1-1-1981. Hence, he became junior to all the petitioners in the cadre of W.G. IV. On promotion, the pay of the petitioners was fixed at Rs.404/- in the cadre of W.G.IV with effect from 1-7-1980 after giving one notional increment in W.G.III. Mariadas was promoted with effect from 1-1-1981 on which date one increment in W.G. III accrued to him raising his pay in W.G. III to Rs.401/-. Applying the principle for fixation of pay on promotion, the pay of Mariadas in W.G. IV was fixed at Rs.404/- with effect from 1-1-

1981. There was a wage revision with effect from 1-1-1983. Consequent to the said revision in wages, the basic pay of Welders including the petitioners promoted to W.G. IV with effect from 1-7-1980 was fixed at Rs.718/- as on 1-1-1983. However, the basic pay of Mariadas was fixed in the cadre of M.G. IV at Rs.738/-. This was due to bunching process in wage revision agreement, due to which different stages in various pay scales were bunched with increment dates remaining unchanged. Petitioners also got Rs.738/- with effect from 11-7-1983. Petitioners made a request for stepping up of their pay on par with Mariadas citing anomaly for rectification with effect from 1-1-1983. As the petitioners were juniors to Mariadas in Grade III, they did not fulfil the conditions in rules for rectification of anomalies in pay of W.G. IV; as such, the benefit of stepping up could not be extended to them. However, the pay fixation of 7 others, who are seniors to Mariadas in W.G.III, who were continued to be seniors in W.G. IV, were given the benefit of stepping up of their pay to that of Mariadas. However, since Mariadas was senior to the petitioners in W.G. III, the comparison with the pay of Mariadas in W.G. IV by his erstwhile juniors in W.G. III, i.e. petitioners is not provided in the Rules and is not tenable.

Heard both sides.

At the outset, it may be necessary to notice Rule 4 of Rules for fixation of pay of Bharat Heavy Plate and Vessels Limited (A Government of India Undertaking), Visakhapatnam, which reads as under:

> "**4. REMOVAL OF ANOMALIES IN PAY FIXATION ON PROMOTION:**
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> Where an employee promoted to a post draws a lower rate of pay in that post, than another employee junior to him in lower grade and promoted subsequently to the same or identical higher post, the pay of the senior employee in the higher post,

should be stepped up to a figure equal to the pay fixed for the Jr.employee in that higher post. In case where the pay has been stepped-up under the above rule, the usual annualincrements subsequent to the date on which pay is so stepped up, be drawn only after the completion of one year's service from the date of such stepping-up and not from the original date of increment. This should be done w.e.f. the date of promotion of the Junior employee and will be subject to the following conditions: in that

a) Both Jr. & Sr. employees should belong to the same cadre (line or promotion) and the posts in which they have been promoted should be identical and on the same discipline.
b) The scales of pay of the lower and the higher posts in which they are entitled to draw pay, should be identical.
c) The anomaly should have arisen directly as a result of the application of normal pay fixation rules. If in the lower post a junior employee draw a higher rate of pay than a senior by virtue of grant of advance increments, provisions contained in these rules will not be invoked to step up the pay of the senior employee.

From the above, it is seen that 23 personnel, who were appointed as Welders, were promoted to Grade III and further promoted to Grade IV as per the merit list. In the list of seniority in the post of Welder Grade III, Mariadas was at Serial No.8. In the promotions made in the year 1980 to the cadre of Grade IV, all the 7 seniors above Mariadas and the petitioners, who are from Sl.Nos.9 to 23 in the list, marched over Mariadas. However, Mariadas was also promoted thereafter with effect from 1-1-1981 i.e. 6 months after the promotion of the petitioners and other seniors. It appears, the increment of Mariadas in the cadre of Grade III was granted in January,1981, in which month he was promoted to Grade IV and the anomaly has occurred in the bunching process. When the pay of Mariadas was fixed at Rs.738/- and seniors were drawing Rs.718/-, the anomaly was rectified by enhancing the salary of 7 persons on par with Mariadas; whereas the same is not extended in case of the

petitioners. In this regard, it may be necessary to refer to the comparative statement of pay fixation of Mariadas with that of the 7 persons, which reads as under:

COMPARATIVE STATEMENT OF PAY FIXATION

	Shri D.Mariadas Badge No.3881 Compared employee (Junior)	Others Aggrieved employee (S.No.1 to 7)
Promoted to WG-IV w.e.f.	01.01.1981	01.07.1980
Pay fixed on promotion to WG-IV in the scale of	Rs.393-11-613	Rs.404.00 Rs.404.00
Basic pay as on 01.07.81	Rs.404.00	Rs.415.00
Basic pay as on 01.01.82	Rs.415.00	Rs.415.00
Basic pay as on 01.07.82		Rs.415.00 Rs.426.00
Basic pay as on 31.12.82	Rs.415.00	Rs.426.00
Pay fixation on revision w.e.f. 01.01.83		
+ Existing DA	Rs.373.20	Rs.373.20
+ Fitment Benefit	Rs. 91.00	Rs. 91.00
	Rs.879.20	Rs.890.20
(-) Revised DA		Rs.219.20 Rs.219.20
	Rs.660.00	Rs.671.00
Fixed in the revised scale of Rs.638-20-978	Rs.678.00	Rs.678.00 (same due to bunching)
2. Additional increments in the new scale (as per agreement)	Rs. 40.00	Rs. 40.00
As on 31.12.82 fixed at	Rs.718.00	Rs.718.00

As on 01.01.83 (Jan.incre.)	Rs.738.00	Rs.718.00 (July incr.)
As on 01.07.83	Rs.738.00	Rs.738.00

> From the above, it can be seen that the compared employee, who was drawing less than aggrieved employees as on 31/12/82 in the pre-revised scale was fixed at an equal stage as on 31.12.82 in the revised scale due to bunching and as his increment month was January, on 01.01.83 he got his annual increment and was at a higher stage than the aggrieved employees whose increment month was July. To set right this anomaly the employees senior to him in the present as well as lower grade and in the same line of promotion were given the benefit of preponing of increment month of 1983 from July to January so that they were equated with the compared employee."

It is clear from the above that the respondents have proceeded while fixing the pay of Mariadas by applying bunching method, since Mariadas accrued in Grade III one increment before he was promoted to the cadre of Grade IV and thus fixed his pay at Rs.404/- as on 1-1-1981 and the same was extended to 7 seniors, but it was not extended to the petitioners holding that they are juniors to Mariadas in the cadre of Grade III. Thus, the respondents have given a go-bye to the fact that all the petitioners have marched over Mariadas and became seniors in the cadre of Grade IV post and in the guise of Rule 4, noticed above, the case of the petitioner was rejected on the ground only the seniors in the Grade III post are entitled on par with Mariadas and not the petitioners. This approach is not only arbitrary but also atrocious.

In fact, a plain read of Rule 4 itself would indicate that where an employee promoted to a post draws lower rate of pay in that post while another employee junior to him in lower grade and promoted subsequently to the same or identical higher post, the pay of the senior employee in the higher post, should be stepped up to a figure equal to

the pay fixed for the junior employee in that higher post. In this case, admittedly, petitioners were promoted to a higher post and they were drawing less than their junior, who was subsequently promoted to the higher post. Therefore, on a plain reading of the above Rule, petitioners are entitled for stepping up of their pay equal to the pay fixed for the junior employee i.e. Mariadas in the higher post i.e. Grade IV. In fact, the same has been scrupulously followed in respect of other 7 persons, who are seniors to Mariadas, whereas the case of the petitioners was rejected on the ground that they were juniors in the lower grade; therefore, they are not entitled for fixation of their pay on par with Mariadas, though they are seniors to Mariadas in Grade IV post. In fact, the above Rule does not contemplate that the employees junior in the lower grade to that of Mariadas are not entitled for stepping up of their pay even when they become seniors to Mariadas in the further promotional post. The approach made by the respondents is atrocious, irrational, contrary to the general principles of service jurisprudence.

It appears, Rule 4 of the Rules was made keeping in view that generally, only seniors will be promoted to a higher post first and whenever a junior in the lower cadre is promoted to the higher post, he shall not be allowed to draw more salary than that of the person promoted (whenever anomaly arose while fixing the pay of the junior) by applying bunching system. Therefore, it must be deemed that as soon as the petitioners and 7 others marched over Mariadas, who remained in Grade III for another 6 months, he became junior to all the 22 persons in Grade IV. If the literal construction of the above Rule is taken into consideration, it will lead to injustice to the petitioners. Therefore, insofar as the Rule giving a meaning that where an employee promoted to a post draws a lower rate of pay in that post,

than another employee junior to him in the lower grade and promoted subsequently to the same or identical higher post, must be understood that it does not preclude the authorities from considering the cases of the petitioners, who have marched over Mariadas and became seniors in Grade IV and are entitled for fixation of their pay on par with Mariadas in Grade IV. Even if there is some inconsistency in the said Rule, it is contrary to the general theory of service jurisprudence and to that extent, it must be read down. Here, it may be necessary to notice the Judgment of the Apex Court reported in **C.G.E. SOCIETY v. CALCUTTA MUNICIPAL CORPORATION**[1] wherein it was held as under:

> "35.The rule of "reading down" a provision of law is now well recognised. It is a rule of harmonious construction in a different name. It is resorted to smoothen the crudities or ironing the creases found in a statute to make it workable. In the garb of 'reading down', it is not open to read words and expressions not found in it and thus venture into a kind of judicial legislation. The rule of reading down is to be used for the limited purpose of making a particular provision workable and to bring it in harmony with other provisions of the statute. It is to be used keeping in view the scheme of the statute and to fulfil its purposes……."

For all the above reasons, I am of the considered opinion that the petitioners are entitled for fixation of their pay in the cadre of Grade IV on par with Mariadas as was done in case of other 7 persons. The petitioners are entitled for all the consequential benefits thereof.

The Writ Petition is allowed to the extent indicated above. No order as to costs.

12-4-2007

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[1] 2003 AIR SCW 4927